

Members

Rep. Markt Lytle, Chair
Rep. Dale Sturtz
Rep. Richard Mangus
Rep. Phyllis Pond
Sen. Greg Server
Sen. Harold Wheeler
Sen. Allie Craycraft
Sen. James Lewis



NATURAL RESOURCES STUDY COMMITTEE

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MEETING MINUTES¹

Meeting Date: October 25, 1999
Meeting Time: 12:30 p.m.
Meeting Place: Falls of the Ohio State Park,
Interpretive Center
Meeting City: Clarksville, Indiana
Meeting Number: 6

Members Present: Rep. Markt Lytle, Chair; Rep. Dale Sturtz; Rep. Richard Mangus;
Rep. Phyllis Pond; Sen. James Lewis.

Members Absent: Sen. Greg Server; Sen. Harold Wheeler; Sen. Allie Craycraft.

Call to Order. Rep. Markt Lytle, Chair of the Natural Resources Study Committee, called the meeting to order. After an introduction of the committee members, Rep. Lytle introduced the first topic which pertained to the pay scale for support staff at the Indiana Department of Natural Resources (IDNR).

Pay Scale for Support Staff at the Department of Natural Resources (IDNR). Blake Taylor, Director of Human Resources, IDNR, thanked the Committee for its help in obtaining parity pay for its professional employees. The IDNR maintains a support staff of 180. The support staff are under the Unity Team bargaining unit. The State Personnel Department is in the process of studying and making pay adjustments, if necessary, for labor, trade, and craft personnel.

Oil and Gas Environmental Fund and Orphan Equipment Salvage. Dennis Swager, President, Indiana Oil and Gas Association, explained that the Environmental Fund was established in 1998. Revenue in the Fund can be used for one of four purposes: (1) to plug abandoned wells (or wells that are no longer bonded); (2) to mitigate emergency or environmental damage to people or the environment around the well; (3) to plug the well if the operator does not have the resources; and (4) to protect the public safety. The principle source of revenue for the fund was a \$50 well fee assessed operators of class 2 injection wells. (This fee has been suspended.) Interest on revenue in the fund as well as penalties and permit fees assessed to drill a well are also deposited in the fund.

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For the 1998-99 biennial budget, \$100,000 per year was taken from the Fund to help finance the operations of the IDNR Division of Oil and Gas. For the 1999–01 biennial budget, an additional \$100,000 per year was taken from the Fund to help finance the operations of the IDNR Division of Oil and Gas. The Association protested the use of the money in the fund for purposes of the Division's operations. The Association would like to see all moneys plus interest taken from the Fund and used to finance the IDNR to be repaid to the fund. The fund has a balance of about \$500,000. About \$150,000 is used each year to plug abandoned wells. Prior to the use of the fund for IDNR operations, the oil and gas severance tax was used to fund the Division. However, with the low oil prices and the decrease in the production of oil, the severance tax revenue also declined and was not sufficient to fund the Division's operations.

The state can locate approximately 900 orphaned wells, but does not know the locations of all orphaned wells. Oftentimes the operator of a well can not be reached, the bond is forfeited, and the well becomes the responsibility of the IDNR. An average cost to plug a well ranges from \$2,500 to \$5,000. Some wells could cost \$20,000 to \$25,000. His association will work with the IDNR as a contractor to provide labor and services to help stretch dollars from the Environmental Fund to get the wells plugged. The Association does not, however, want to touch the well equipment because of ownership issue.

When bond is forfeited, the bond money is deposited into the Bond Forfeiture Fund that also maintains about a \$500,000 balance. His Association would like to understand the state budget process and to recapture the revenue that was in the Environmental Fund. Oil and gas producers are extremely opposed to contributing to the Fund if it is used for operational purposes. The \$50 per well has been suspended. This well-drilling fee was the major source of revenue, so now there is not a lot of money flowing into the fund. Members of his association will not be receptive to another fee due to the way that the money has been used.

Priscilla Kelly, Chair of the Southwest Indiana Brine Coalition, noted that prior to 1993 there was little use of the fund. She recommends that the state enact legislation to ensure that the state does not have to pay for the consequences of a clean-up. If there is a tax lien on the property that is held by the county or a financial institution, the county or financial institution could sue the Division of Oil and Gas for the money. When the Division plugs a well, the Division can not remove the equipment if there is a lien on the property. The equipment is left to rust and contaminate the soil. Her Coalition would help prepare a draft to address these issues. The IDNR has spent \$25,000 capping a well that was located in her backyard. The IDNR did not know about the well until she informed them. Many people are afraid to notify authorities of a well on their property for fear that they will be financially responsible to plug it and clean it up. The Fund was established so that the state could maintain responsibility for the wells and not the EPA.

Bill Hayden, Sierra Club, Izzak Walton League, and the Save the Dunes Council, explained that the royalty payments to the state on oil have decreased because of the low prices of oil. The Budget Committee opted to use the Environmental Fund to finance administrative expenses as opposed to using the General Fund or the state surplus. According to Mr. Hayden, the Division of Oil and Gas had been trying to build up revenues in the Fund in order to correct major problems. By taking money from the Fund, the program to fix abandoned wells will soon be bankrupt. He would appreciate any efforts the committee can make to replace the lost revenue. Abandoned wells will not go away, even though the oil and gas industry might. A well allows saline waters in deep aquifers to rise and contaminate wells higher up.

Sean Gallagher, past president of the Oil and Gas Association, noted that the Association proposed a new fee on operators to be used to investigate operators who are going out of business. However, the proposal did not pass because the Governor had a "no new fee" policy.

Floodplains and Floodway Regulation. Jim Hebenstreit, Assistant Director, IDNR Division of Water, explained that anyone constructing in a floodway must have a permit. The IDNR has tried to develop exemptions or criteria that would allow for a permit to construct in a floodway. The processing of applications takes from three to six months. Utilities have exemptions. The Division of Water is in the process of reorganizing in order to give more timely and more consistent information. The Division works with the federal government and advises communities on federal requirements. Kentucky uses federal standards which are more lenient than Indiana standards. In both states, businesses can rebuild in a floodway; however, the federal Flood Control Act prohibits construction of new homes in a floodway. A business can rebuild if the construction does not cause the flood level to increase by more than 1/100 of a foot. Mr. Hayden noted that there was a considerable amount of construction on the Indiana side of the Ohio River.

Department of Indiana Heritage. Reid Williamson, President of the Historic Landmarks Foundation, remarked that the Foundation is a private entity composed of 7,000 citizens statewide. He noted that eight state agencies are involved in history, and that it would make sense to combine these eight agencies into one department. The IDNR has two divisions: the Division of Historic Preservation and the Division of the State Museum and Historic Sites. All memorials are under another administration. Those in the private sector believe that combining these entities will result in a huge gain in efficiency, and perhaps a cost savings as well. The millennium is a good time to look at how to go ahead in the future. With the head of the new department appointed by the Governor, Mr. Williamson believes that Indiana heritage and history would be elevated to its rightful and important post. Sen. Merritt introduced the proposal during the last session; however, the proposal did not receive a hearing in Senate Finance. The proposal does not require an increase or decrease in staff, but would combine existing staff.

Reimbursement Fee for Killing of Endangered Species. Dick Mercier, Indiana Sportsmen's Roundtable, proposed increasing the reimbursement fee to be paid to the state if someone illegally took an endangered species. The existing reimbursement fee for endangered species is the same as for fish or game, which is \$20 for the former and \$30 for the latter. He proposed increasing the reimbursement fee from \$20 to \$500 and from \$30 to \$1,000.

Pat McGuffey, Indiana's Hardwood Lumberman's Association, indicated that recent court cases have included damaging habitat in the definition of taking an endangered species. She encouraged the Committee to clarify how the money collected from the fee is to be used. The proposal deposits the fee in the conservation officers' fish and wildlife fund, which supports the covert operations of conservation officers. Revenue in the fund has been declining due to delays in prosecution. She suggested that the proposal indicate that the fee be used only for reimbursement.

Sen. Lewis indicated that it would be difficult for him to support a proposal that requires someone to pay \$500 for accidentally killing a bat. Ms. Adams indicated that the proposal does not include accidental killing, but knowingly or intentionally killing. Rep. Pond indicated that she had a problem with the amount of the fee. Mr. Mercier indicated that it costs the IDNR more than \$500 to replace some species.

Greg Ellis, attorney, IDNR, noted that the individual would have to have knowledge that the animal was an endangered species. Mr. Hayden expressed his concern that the proposal allows for the destruction of the habitat of the endangered species. He proposed specifying that "take" for purposes of the destruction of habitat does not include forestry or farming.

David Coed, Audubon Society, stressed that he did not think the proposed reimbursement fee was too much for a person to have to pay for willingly killing a species that is on the

endangered list. Species stay on the endangered list until they have recovered. In response to citing of bats in attics, he stated that the Indiana bat does not frequent attics.

Rep. Lytle indicated that the proposal appeared to need additional work. The proposal could still be introduced, but it would not have the recommendation of the Committee.

Mr. Hayden said that all bats in Indiana are not the endangered "Indiana bat." Additional information on endangered species might clarify distinctions.

Falls of the Ohio State Park. Property Manager **Steve Knowles** welcomed the committee to the park. The Falls of the Ohio was established in 1960 when local leaders wanted to see the fossil beds protected. Prior to this time, the Secretary of the Interior Morris Udall considered making the area a national park. The National Park Service studied the issue for a couple of years. The site met federal geologic requirements, but not historic criteria. The second recommendation was for an intrastate park that both sides of the river would oversee. In 1981 the Falls of the Ohio was considered as a national wildlife area that would be overseen by Army Corps of Engineers. In 1990, the site was set aside as the 20th Indiana state park. The Interpretive Center was also built. The fossil beds are under water nine months of the year. People from both sides of the river come to learn about the fossils. The focus of the park is education. The Park currently has on exhibit a world renown exhibit on fossils. The Park accommodates about 22,000 visitors a year.

Preservation of Cemeteries. **Lois Mauk, INPCRP**, provided photographs and descriptions of cemeteries that had been desecrated. She introduced the cemetery supervisor from Fayette County, John Walters.

John Walters, Fayette County, provided a description of the development and operation of the Fayette County cemetery preservation process. The county has had a cemetery commission and imposed a tax to pay for the preservation since 1979. Prior to 1996, maintenance on the cemeteries was limited to mowing. When Mr. Walters was hired in 1996, he noticed that headstones needed to be restored and preserved. He talked with the county commissioners and they determined that taking care of the markers would require a full-time commitment. The county decided that it was their moral responsibility. The trustees had money already in the budget to maintain the cemeteries. Mr. Walters has a budget of \$48,000 to care for pioneer cemeteries. He surveys every marker that goes through the restoration project. The county recorder's office receives copies of the survey. Some repairs are complicated, and headstones need to be extracted from the ground. He maintains a folder for each township and provides upkeep for 62 cemeteries on a regular basis. He is still searching for other cemeteries. He has restored eight and has been contacted by others for advice and information. Much information is disseminated through workshops and other training programs. His goal is to save pioneer cemeteries. He remarked that many headstones contain art work as well as historical artifacts that will disintegrate without care. The county and city have worked together. Each township's money is based on how many cemeteries are located within the township. The county has provided labor and the townships have paid for materials. Often the county uses community corrections workers or individuals who are retired help with the restorations.

Larry Gray, Jefferson County, indicated that the Jefferson County Cemetery Commission was established in 1993. The Commission uses funds from a tax levy and from donations. About 20 of the 50 cemeteries have been restored. Most of the cemeteries have been located on private property.

Spence Schnaitter, IDNR Assistant Director, indicated that all cemeteries have been placed on a county map by the WPA or the DAR in the 1930's. The County cleans up a portion of all the cemeteries twice a year. The trustees, however, do not contribute financially to the project. In German Township all the cemeteries have been identified and placed on the county map with

a location, including active cemeteries.

Pat and Paul Coffman, Coffman Farms in Borden, supported Ms. Mauk's concern and relayed some of their experiences and observations relative to the preservation of cemeteries. They would like to see legislation designed to protect cemeteries and noted that Iowa has very strict laws relative to the preservation of cemeteries.

Jean Burke, Clark County, also described how hogs and cattle have destroyed a cemetery. The headstones are too heavy for her to lift. Historic figures are buried in these cemeteries, and regular maintenance is needed and may help to avert vandalism.

Frankie Belcher Eads, also shared pictures of desecrated cemeteries. She noted that maintenance is not mentioned in the proposed language.

Rep. Lytle noted that locals do not want mandates. By considering legislation and holding hearings on the issue, he hopes to raise awareness of the problem and encourage counties to take action.

Consideration of Proposed Drafts. The Committee considered and recommended the following proposed drafts for introduction to the General Assembly.

PD 3270 requires a person who wishes to record any interest in property that contains a burial ground or cemetery to record an accurate survey of that part of the property containing the burial ground or cemetery that shows the approximate location of all human remains situated on the property. Beginning January 1, 2003, the proposal provides penalties for failure to record this information.

Mr. Ellis indicated that the proposed language could conflict with federal law 16 USC 470-(w) and (hh). Federal law requires that burial sites be kept confidential in order to protect archaeological sites and artifacts from looters. Mr. Molitor indicated that if no one knows where the cemetery is, the cemetery can not be protected. The objective is to protect the sites and ensure that no looting takes place.

The committee recommended PD 3270 by a vote of five in favor and none opposed.

PD 3252 establishes a procedure for the transfer of property containing a burial ground or cemetery. The proposal requires the transferor of the property to deliver a disclosure document to the transferee before the transfer takes place. The proposal specifies the form that the disclosure must take and requires a disclosure document to be recorded with the county recorder. The proposal provides penalties for failure to deliver a disclosure document, for making a false statement in a disclosure document, and for failure to record a disclosure document.

Mr. Ellis noted that the language may conflict with federal law regarding the disclosure of specific sites.

Jack Briles, Briles Masonry, explained that a cemetery located near his residence is to be sold by the heirs of the property. However, the deed to the property does not mention the cemetery. He supported language in the draft that requires disclosure.

The committee recommended PD 3252 by a vote of five in favor and none opposed.

PD 3387 provides that the Division of Historic Preservation and Archeology of the Department of Natural Resources may conduct a program to survey and record all cemeteries and burial

grounds in each county in Indiana and may do this work alone or under an agreement with certain entities. The Division may accept gifts and grants for this work. The draft also allows for the establishment of a trust fund to be composed of gift and grant money.

The committee recommended PD 3387 by a vote of five in favor and none opposed.

PD 3247 Defines development plans and requires development plans to be submitted to the department of natural resources (DNR) for approval according to standards established by rule that preserve and protect both the rights and interests of landowners and the sensitivity of human beings for treating human remains with respect and dignity. Provides penalties for a person who disturbs the ground within 500 feet of a recorded burial ground or cemetery for the purpose of development without having an approved development plan or in violation of an approved plan. Removes the agricultural exemption from the law requiring plan approval and reporting to DNR concerning the discovery and removal of artifacts and burial objects. puts some restriction on deve when in vicinity of burial ground or assumes adoption of other bills. Exemption for agriculuture purpose cause concenr that farmer who plows up arrow head would have to stop. Some additional thought should be given to this.

The committee recommended PD 3247 by a vote of five in favor and none opposed with the following changes: Section 4, which pertains to an agricultural exemption would be removed; Persons may not disturb the grounds for development within 100 feet of the burial grounds; Utilities would be allowed exemptions for the repair of certain existing equipment.

PD 3533 provides for the regulation of trapping and raptors.

The committee recommended PD 3533 by a vote of five in favor and none opposed.

PD 3246 provides that the Director of the Department of Natural Resources may reduce the per acre fee for surface coal mine operators that have participated in the surface coal mine reclamation bond pool for at least five years.

The committee recommended PD 3246 by a vote of five in favor and none opposed.

PD 3531 provides an annual grant that counties may request based on the number of historic bridges in the county and subject to the amount appropriated from the State General Fund for historic bridge maintenance grants. The draft requires the county executive to use the grant money for the maintenance of historic bridges or covered bridges.

The committee recommended PD 3531 by a vote of five in favor and none opposed.

Final Report of the Committee. The committee approved the final report by a vote of five in favor and none opposed on the condition that the work of the committee on October 25 be included.

Adjournment. Rep. Lytle adjourned the meeting at 4:30 p.m.